

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
MAUI ELECTRIC COMPANY, LIMITED)
For Approval of Waivers from the)
Competitive Bidding Framework.)

DOCKET NO. 2008-0061

ORDER DENYING IN PART AND GRANTING
IN PART REQUESTS FOR EXTENSIONS OF TIME

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FILED

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
MAUI ELECTRIC COMPANY, LIMITED)
For Approval of Waivers from the)
Competitive Bidding Framework.)

By this Order, the commission denies in part and grants in part the requests for extensions of time filed by the HECO/HELCO Companies and Na Makani on January 12, 2009.¹ In particular, the commission denies the requests for a sixty-day extension of time, and instead, grants a fourteen-day extension of time, until January 26, 2009, for the HECO/HELCO Companies to

HECO, HELCO, and MECO are collectively referred to as the HECO Companies, while HECO and HELCO are collectively referred to as the HECO/HELCO Companies.

file fully executed term sheets for the two independent power producer projects. No further extensions will be granted.

I.

Background

On September 8, 2008, the commission approved, subject to certain conditions, the HECO Companies' requests for waivers from the competitive bidding process for the following three independent power producer projects: (1) Na Makani's wind energy/hydroelectric hybrid project; (2) Waikoloa Wind Power LLC's ("Waikoloa Wind") wind farm/battery energy storage project; and (3) Bio Energy Systems of Hawaii, Inc.'s ("Bio Energy") firm capacity biomass project.² In particular, Ordering Paragraph No. 1 of the commission's Decision and Order provides:

The HECO Companies' requests for waivers from the competitive bidding process for the three independent power producer projects that are the subject of this proceeding, i.e., the Na Makani, Waikoloa Wind, and Bio Energy Projects, are approved; provided that: (A) fully executed term sheets for each of the projects, as described in Section II.C, above, [of this Decision and Order,] are filed within four months from the date of this Decision and Order; and (B) documentation supporting the fairness of the price negotiated between the HECO Companies and the independent power producers are included in any application for approval of a PPA.

Decision and Order, filed on September 8, 2008, Ordering Paragraph No. 1, at 21 (emphasis added).

The deadline for the HECO Companies to timely file fully executed term sheets for each of the three projects was

²Decision and Order, filed on September 8, 2008 ("Decision and Order").

January 12, 2009, pursuant to Ordering Paragraph No. 1 of the commission's Decision and Order.³

On January 12, 2009, the HECO/HELCO Companies jointly filed status reports under partial confidential seal for the Na Makani and Waikoloa Wind Projects, respectively. By their respective status reports, the HECO/HELCO Companies inform the commission that: (1) the HECO/HELCO Companies were unable to complete fully executed term sheets for the Na Makani and Waikoloa Wind Projects; and (2) an estimated additional sixty days, until March 13, 2009, are needed to continue the utilities' internal review of the two revised proposals to determine if such proposals are acceptable, and if so, to complete the term sheets for these two projects. Accordingly, the HECO/HELCO Companies request a sixty-day extension of time, from January 12, 2009 to March 13, 2009, to submit fully executed term sheets for the Na Makani and Waikoloa Wind Projects, respectively.

Also on January 12, 2009, the law firm of Yamamoto & Settle filed its Notice of Appearance of Counsel, on behalf of

³Previously, the commission, on January 5, 2009, denied MECO's request for a forty-five day extension of time, from January 12, 2009 to February 26, 2009, to file the fully executed term sheet for the Bio Energy Project. Order Denying Requests for Extensions of Time, filed on January 5, 2009. The commission's rationale for denying MECO's request is discussed in Section II of this Decision and Order.

Moreover, consistent with the HECO Companies' written notifications in other pending proceedings, see, e.g., In re Public Util. Comm'n, Docket No. 2007-0176 (HECO Companies' letter, dated November 10, 2008), the commission removed Mr. William A. Bonnet's name from the Certificate of Service attached to the Order Denying Requests for Extensions of Time, filed on January 5, 2009.

Na Makani;⁴ and (2) Na Makani, through its counsel, filed a request for a sixty-day extension of time to submit the fully executed term sheet for the Na Makani Project.⁵

II.

Discussion

HAR § 6-61-23(a)(1) states:

Enlargement. (a) When by this chapter or by notice or by order of the commission, any act is required or allowed to be done at or within a specified time, the commission for good cause shown may at any time, in its discretion:

- (1) With or without motion or notice, order the period enlarged, if written request is made before the expiration of the period originally prescribed or as extended by a previous order[.]

HAR § 6-61-23(a)(1).

In In re Hawaiian Elec. Co., Inc. and Hawaii Elec. Light Co., Inc., Docket No. 2008-0091 ("Docket No. 2008-0091"), the commission denied the HECO/HELCO Companies' request for a forty-five day extension of time to file a fully executed term sheet for the Hamakua Biomass Energy, LLC ("HBE") biomass energy project (the "HBE Project"). Instead, the commission granted

⁴Up until January 12, 2009, Na Makani was represented in this proceeding by its co-managing member.

⁵Request for Extension of Time to File Term Sheet for Na Makani; and Certificate of Service, filed on January 12, 2009 (collectively, "Request for Extension of Time"). The deadline for the Consumer Advocate to file responses, if any, to: (1) Na Makani's request, is January 20, 2009; and (2) the HECO/HELCO Companies' request, is January 20 or 22, 2009, depending on the manner of service made by the HECO/HELCO Companies to the Consumer Advocate on January 12, 2009. Given the commission's decision to grant limited extensions of time for two weeks, up until January 26, 2009, the commission issues this Order forthwith.

the HECO/HELCO Companies a two-week extension of time, until December 23, 2008, to file a fully executed term sheet for the HBE Project, and noted that no further extensions would be granted by the commission. In denying MECO's request in part, the commission reasoned:

. . . . As discussed in the Decision and Order, the Commission must balance the competing interests of the benefits of the Project against the benefits of competitive bidding. Indeed, this concern is heightened by information recently provided to the Commission that the HBE Project is in direct competition with another biomass energy project proposed by Hu Honua Biomass Energy LLC, as noted in Docket No. 2008-0143. In addition, as set forth in the Decision and Order, the purpose of a waiver is to allow for a more expeditious means of adding renewable generation to HELCO's grid than competitive bidding. This purpose would be frustrated by allowing the full [forty-five day] extension requested by the HECO[/HELCO] Companies.

Docket No. 2008-0091, Commission's letter, dated December 9, 2008, at 1-2.

Thereafter, in this proceeding, Docket No. 2008-0061, the commission denied MECO's procedural requests with respect to the Bio Energy Project, including the request for a forty-five day extension of time, from January 12, 2009 to February 26, 2009, to file the fully executed term sheet for this project. In denying MECO's requests, the commission reasoned:

Consistent with its rationale in Docket No. 2008-0091, the commission finds that in balancing the benefits of a proposed project that is exempt from the competitive bidding process vs. the benefits associated with competitive bidding, the granting of the requested extensions of time herein appears inconsistent with the public interest. The underlying purpose of the waiver granted to MECO for the Bio Energy Project was to allow for a more expeditious means to add renewable generation to MECO's grid other than by

the competitive bidding process. Here, however, the contracting parties have yet to commence productive discussions on reaching agreement on a term sheet, due to Bio Energy's inability to secure the requisite financing for its proposed project. Under the circumstances, the commission denies MECO's requests for extensions of time.

Order Denying Requests for Extensions of Time, filed on January 5, 2009, at 5-6.

More recently, in Docket No. 2008-0091, the commission denied the HECO/HELCO Companies' request, dated December 23, 2008, for a second extension of time to file a fully executed term sheet for the HBE Project.⁶ In denying the HECO/HELCO Companies' request, the commission reasoned:

As set forth in the Decision and Order filed on August 8, 2008, [in Docket No. 2008-0091], the commission "is cognizant of the value in requiring the HECO[/HELCO] Companies to utilize competitive bidding to acquire new generation resources. With competitive bidding, the commission has some assurance, for example, that the price that the HECO[/HELCO] Companies are paying is fair and in the best interest of the ratepayer." The commission has no such assurance in a waiver docket such as this one absent the conditions imposed in the Decision and Order.

Given HELCO and HBE's inability to reach an agreement on a term sheet, especially on the issue of price, in the time frame set forth in the Decision and Order, [filed in Docket No. 2008-0091,] despite a partial extension, the commission has no choice at this point but to deny a second extension request. A further extension in this instance would frustrate the purpose of a waiver in allowing for a more expeditious means of adding renewable generation to HELCO's grid. This is consistent with the commission's statement in connection with the first extension request that "[n]o further extension requests will be granted" in this docket. Accordingly, the commission

⁶Docket No. 2008-0091, Order Denying HECO Companies' Second Extension Request, filed on January 12, 2009 ("Order Denying Second Extension Request").

denies any additional request for extension of time,

Docket No. 2008-0091, Order Denying Second Extension Request, at 5-6.

A.

Na Makani Project

The HECO/HELCO Companies, in support of their request for a sixty-day extension of time to submit the fully executed term sheet for the Na Makani Project, state:

. . . . If Na Makani's proposed wind energy project successfully integrates a fast-response hydroelectric generation system that is able to effectively address the challenges that intermittent wind generation presents to HELCO's system, then Na Makani's proposal represents an opportunity for a scalable demonstration of the wind/pumped hydroelectric storage interaction concept at a site which has all the necessary attributes and is likely to face few regulatory and permitting challenges in its execution. The results of this project could be useful on all three Hawaiian Electric Company systems as pumped hydroelectric storage is one of the technologies being examined as a resource on all systems both by the utilities and by outside planning efforts such as the Hawaii Clean Energy Initiative.

HECO/HELCO Companies' letter for the Na Makani Project, dated January 12, 2009, at 2.

Na Makani, in support of its concurrent request, asserts that during the period from April 3, 2008 to September 8, 2008, when the commission was considering the application for waivers, there were no discussions with HECO, as HECO stated its preference to wait until the commission issued its decision on the waiver requests before engaging in any substantive discussions; since September 8, 2008, Na Makani has

been working diligently on its project with HECO/HELCO, including several meetings; and in response to HECO/HELCO's feedback, Na Makani revised and updated its project design, non-utility generation proposal ("NUG"), cost structure, and financial analyses several times, culminating in a revised single NUG, dated January 6, 2009, submitted to HECO/HELCO on January 7, 2009. Accordingly, Na Makani states that the contracting parties have not had the opportunity to substantively discuss or focus their efforts on a term sheet, and they need an additional sixty days to complete their technical and financial discussions, and to negotiate and execute a term sheet for the Na Makani Project.

The commission reiterates that in balancing the benefits of a proposed project that is exempt from the competitive bidding process vs. the benefits associated with competitive bidding, the granting of the full sixty-day request for extensions of time herein appears inconsistent with the public interest. The underlying purpose of the waiver granted to HECO/HELCO for the Na Makani Project was to allow for a more expeditious means to add renewable generation to HELCO's grid other than by the competitive bidding process. This purpose, in the commission's view, will be frustrated by allowing the full sixty days requested by the HECO/HELCO Companies and Na Makani.

Accordingly, the commission denies the requests for a sixty-day extension of time, and instead, grants a fourteen-day extension of time, until January 26, 2009, for the HECO/HELCO

Companies to file the fully executed term sheet for the Na Makani Project. No further extensions will be granted.

B.

Waikoloa Wind Project

The HECO/HELCO Companies, in requesting a sixty-day extension of time to submit the fully executed term sheet for the Waikoloa Wind Project, state that an estimated additional sixty days are needed to continue the utilities' internal review of Waikoloa Wind's revised proposal to determine if such proposal is acceptable, and if so, to complete the term sheet for this project. The commission, likewise, denies the request for a sixty-day extension of time, and instead, grants a fourteen-day extension of time, until January 26, 2009, for the HECO/HELCO Companies to file the fully executed term sheet for the Waikoloa Wind Project. No further extensions will be granted.

III.

Orders

THE COMMISSION ORDERS:

1. The HECO/HELCO Companies' requests for extensions of time to file fully executed term sheets for the Na Makani Project and Waikoloa Wind Project, respectively, filed on January 12, 2009, are denied in part and granted in part, consistent with the terms of this Order.

2. Na Makani's request for an extension of time to file a fully executed term sheet for the Na Makani Project, filed

on January 12, 2009, is denied in part and granted in part, consistent with the terms of this Order.

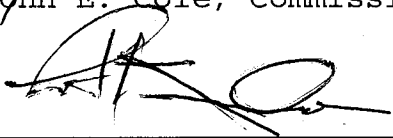
3. The new deadline date for the HECO/HELCO Companies to file full executed term sheets for the Na Makani Project and Waikoloa Wind Project, respectively, is January 26, 2009. No further extensions will be granted.

DONE at Honolulu, Hawaii JAN 22 2009.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2008-0061.cp

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

DEAN MATSUURA
MANAGER, REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
DAMON L. SCHMIDT, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813

Counsel for HECO, HELCO, and MECO

IAN ROBERTSON
NA MAKANI MOA'E KU
76-6188 Alii Drive
Kailua-Kona, HI 96740

DEAN T. YAMAMOTO, ESQ.
JODI S. YAMAMOTO, ESQ.
MARIE L. MISAWA, ESQ.
YAMAMOTO & SETTLE
700 Bishop Street, Suite 200
Honolulu, HI 96813

Counsel for NA MAKANI MOA'E KU